

AUG 03 2006

## Facsimile Cover Page

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**Fax Number:** 15712738300

**From:** Fred Zollinger

**Company:** Zollinger & Burleson Ltd.

**Phone Number:** 330/526-0104

**Fax Number:** 866/311-9964 (toll free)

**Pages:** Memo page(s) plus 9 page(s) of attachments

**Subject:** 09/883,619 Notice of Appeal

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Please enter the attached submissions in this application.

Fred Zollinger

Zollinger & Burleson Ltd.

P.O. Box 2368

North Canton, OH 44720

330-526-0104 phone

330-361-0139 mobile

1-866-311-9964 toll free fax

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1949-A-CIP

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on 3 August 2006Signature Fred H. Zollinger IIITyped or printed name Fred H. Zollinger III

Application Number

09/883,619

Filed

18 June 2001

First Named Inventor

Wynalda

Art Unit

1772

Examiner

Simone

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/98)

☒ attorney or agent of record.  
Registration number 39, 438
☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Fred H. Zollinger III  
Signature

Fred H. Zollinger III  
Typed or printed name

330 526 0104  
Telephone number

3 August 2006  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

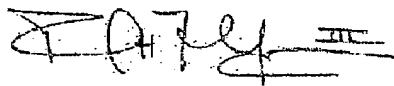
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wynalda  
Serial No.: 09/883,619  
Filing Date: June 18, 2001  
Examiner: Simone, C.  
Art Unit: 1772  
Confirmation No.: 5116

I hereby certify this 5 page correspondence is being facsimile transmitted (571-273-8300) to the USPTO, on August 3, 2006.



Fred H. Zollinger III, Reg. No. 39,438

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P.O. Box 1450  
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**Pre-Appeal Brief Request for Review**

Sir:

Before the filing of an appeal brief, the Applicant respectfully requests the consideration of the following arguments in favor of the patentability of the independent claims rejected in the final office action and advisory action.

**Section 112 Rejections**

Claims 7-15, 23, 26-29, and 35 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Applicant respectfully traverses these rejections.

1. The Final Office Action and Advisory Action contend the recitation of "the V-shaped edge being indented into the page to define the pocket for the adhesive" in claim 7 is new matter. The Applicant respectfully disagrees. The V-shaped edge that is indented into the page currently recited in claim 7 is described in the written description at page 9, lines 10-16 and is depicted in Figs. 7-10 wherein the edge (70) of the page (22) is V-shaped to receive the adhesive (72). With reference to Fig. 7, the V-shaped edge is depicted as being indented into the body of the page (22). As explained in MPEP 2163.02, an applicant may show possession of the

claimed invention in a variety of ways – including the written description and the drawings. In this case, the indented V-shaped edges are both described in the written specification and depicted in the drawings. Although the exact words “indented into the page” are not used in the written specification, the drawings and written specification support the use of these words in the claims. There is no requirement that the exact words of the claims be found in the written description. See MPEP 2163.02. The Applicant thus submits the claim recitation describing the nature of the V-shaped is fully supported by the written description and the claims are in compliance with section 112.

2. The Final Office Action and Advisory Action contend the recitation of the non-pivotable connection between the page halves (44) is new matter. The page halves (44) are shown throughout the drawings and are described in the written description at page 7, line 18 through page 8, line 16. This material discloses that the page halves (44) may be connected together (through any of the disclosed attachment methods – locking fingers 46, adhesive 56, or weld 60) at all four corners of the page halves. Once the page halves are connected in this manner to form the page, the page halves cannot pivot with respect to each other. One of ordinary skill in the art would readily understand that the page halves described in the specification are fixed with respect to each other – and are thus non-pivotably connected to each other. The drawings and written specification thus support the use of the word “non-pivotable” in the claims. Again, there is no requirement that the exact words of the claims be found in the written description. See MPEP 2163.02. The Applicant thus submits the claim recitation describing the non-pivotable connection between the page halves is fully supported by the written description and the claims are in compliance with section 112.

### **Section 102 Rejection**

Claim 35 stands rejected as being anticipated by Brinkhurst '452. Claim 35 requires the claimed storage container (10) to have a substantially rigid plastic page (22) that is formed from first and second page halves (44) that were separately formed and non-pivotably joined together to form the substantially rigid plastic page.

The actions cite element 13 (as described at Page 6, lines 21-25) in Fig. 4 of Brinkhurst '452 as meeting the "page" limitation of claim 35. The actions do not, however, describe where Brinkhurst '452 discloses page halves that are connected together to form a page. Brinkhurst '452 thus does not disclose separate page halves. The Applicant interprets the current rejection as applying the Brinkhurst '452 pages as meeting the "first and second page halves" recitation of claim 35. However, claim 35 requires the first and second page halves to be non-pivotably joined together to form the substantially rigid plastic page. Page 6, lines 21-25 disclose that the Brinkhurst '452 container may have multiple pages (a series of pages 13) that are either hinged together (thus pivotably connected directly together) or are each individually connected to the spine (thus pivotably movable with respect to each other about the spine). The Advisory Action (top of page 3) notes that the Brinkhurst "pages 13 may be arranged side-by-side and separately connected to the spine (see page 6, lines 23-24) and therefore, do not have to be pivotably connected together." The Applicant disagrees. The Brinkhurst '452 pages pivot with respect to each other in each of the Brinkhurst embodiments. Claim 35 requires page halves to be non-pivotably joined together. Even when the Brinkhurst pages (13) are not connected directly to one another, they still pivot with respect to each other. Further, the Brinkhurst pages (13) do not meet the "first and second page halves" limitation. As such, the Applicant thus submits the Final Office Action does not present a *prima facie* case of anticipation.

### Section 103 Rejections

As explained above, the Applicant submits Brinkhurst '452 does not disclose or suggest the claimed "first and second page halves" recitation. Claims 7, 27, and 35 each recite the page halves. The Applicant thus submits a *prima facie* case of obviousness has not been established for claims 7, 27, and 35 because Brinkhurst does not disclose the page halves in addition to the reasons noted below.

1. **Claim 7** Claim 7 stands rejected as being obvious in view of the combination of Brinkhurst '452 and US Patent 3,244,436 to McKowen. The Applicant respectfully traverses the rejection. The action admits that Brinkhurst '452 does not disclose the use of a V-shaped edge on its pages to receive adhesive. The action cites Fig. 1, item #12, of McKowen to support the contention that it is old and well known in the art to have a page edge in a V-shape to provide a pocket for an adhesive. The Applicant respectfully traverses the rejection. None of the McKowen pages have V-shaped edges as recited in claim 7. The Applicant has amended claim 7 to make it clear that the edges of the pages were in the form of V-shaped indentations disposed into the body of the page. The action cites the inner edge of the McKowen signatures (12) as being V-shaped so that adhesive (18) can be disposed in the gaps between the signatures (12). These are not, however, page edges as recited in claim 7. McKowen discloses a traditional and well known type of book binding wherein signatures (12) are sewn (34) together and glued to a spine. In the book binding art, a "signature" is "a large sheet printed with four or a multiple of four pages that when folded becomes a section of the book." The "page 12" cited by the Examiner is actually a plurality of book pages with only the outer two pages (joined by fold) engaging the adhesive. The V-shaped gaps are formed between adjacent signatures 12 – not on the edges of the pages. Each page of McKowen's structure thus does not have an edge that is V-shaped in cross section and indented into the page as required by claim 7. The Applicant thus submits the rejection of claim 7 and its dependent claims should be withdrawn.


2. **Claims 27 and 30** stand rejected as being obvious in view of the combination of Brinkhurst '452 and Gelardi '782. Claims 27 requires the literature card to be being disposed within the page between the first and second halves such that the literature card is disposed between the disc-shaped items of recorded media when the disc-shaped items of recorded media are carried by the page halves. The combination of Brinkhurst (a solid page) and Gelardi (literature card disposed against outer surface of page) does not render the claim obvious. The action cites elements 3 and 63 to disclose the Gelardi page halves that are disposed on either

side of the Gelardi literature card. The Applicant interprets Gelardi's elements 3 and 63 as pages – not page halves. The claim requires the page halves to be non-pivotably joined together to form the page within which the card is disposed. Gelardi's elements 3 and 63 do not disclose meet these limitations. Nothing in the two references suggests to one of ordinary skill in the art to locate a literature card between first and second page halves as recited in claim 27. The Applicant thus submits that claim 27, and its dependent claims, are patentable over the art.

Claim 30 requires the outer perimeter of the disc-holding page to be positioned directly between the front and rear paperboard cover members when the cover members are closed. The Applicant submits the teachings of Gelardi are irrelevant because there is no motivation for combining them (or from any other reference) with the Brinkhurst teachings because Brinkhurst teaches away from the solution recited in claim 30. The Applicant thus submits that claim 30 is patentable over the cited combination of references.

In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

Please call the undersigned attorney if any issues remain after this submission.



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Fred H. Zollinger III, Reg. No. 39,438  
Zollinger & Burleson Ltd.